

# Notice of Allowability

Application No.

10/078,903

Examiner

Charles A. Marmor, II

Applicant(s)

BAKRY, MOHAMED

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the After-Final Amendment filed 20 September 2004.
2. ☒ The allowed claim(s) is/are 1-6, 11-13, 15-21, 24-27 and 29-31 (renumbered claims 1-23).
3. ☒ The drawings filed on 19 February 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

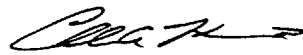
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 09242004.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
Charles A. Marmor, II  
Primary Examiner  
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### EXAMINER'S AMENDMENT

1. This Examiner's Amendment is responsive to the Supplemental Amendment After Final Rejection filed September 20, 2004. The Examiner acknowledges the amendments to claims 1, 11-13, 15, 17, 24, 25, 27 and 31 as well as the cancellation of claims 7-10, 14, 22, 23, 28, 32 and 33. Claims 1-6, 11-13, 15-21, 24-27 and 29-31 are currently pending.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Roger M. Rathbun on September 24, 2004.

3. The application has been amended as follows:

- a. In claim 6, line 2, "said" has been deleted.
- b. In claim 12, line 13, "tube" has been changed to --tube,--.
- c. In claim 13, line 12, "movable affixed" has been changed to --movably affixed--.
- d. Claim 15 has been amended as follows:

15. (currently amended) A biopsy needle for obtaining a sample of tissue within the pleural cavity of a patient, said biopsy needle comprising

an outer tube having a closed distal end, a proximal end and a central canal therethrough, said distal end having a pair of peripheral openings formed in said outer tube proximate the closed distal end thereof,

an inner movable member interfitted within said outer tube, said inner movable member having a distal end adapted to be located at about the distal end of said outer tube and a proximal end accessible to a user at the proximal end of said outer tube, said inner movable member being axially movable within said outer tube,

an end tube affixed to the distal end of said inner movable member, wherein said end tube has an axial needle shaped end extending therefrom and said distal end of said outer tube has an elongated recess formed therein, said axially extending needle shaped end of said end tube adapted to slidably interfit within said elongated needle recess to guide the axial movement of said inner movable member, said end tube having two articulating members ~~movable~~ movably affixed thereto and extending from said end tube, said articulating members being movable between a retracted position within said outer tube and an extended position where said articulating members extend outwardly through said peripheral openings in said outer tube, said articulating members each having an operative surface facing the proximal end of said biopsy needle when in said extended position whereby manipulation of said biopsy needle causes said operative surfaces to contact the pleural cavity of a patient to obtain tissue samples therefrom.

e. In claim 24, line 11, "movable affixed" has been changed to --movably affixed--.

f. Claim 27 has been amended as follows:

27. (currently amended) A method of obtaining a sample of tissue from the pleural cavity of a patient, said method comprising the steps of:

providing a needle having a closed distal end with at least one articulating member having a brush edge formed thereon movable between a retracted position to and an extended position extending outwardly from the needle proximate to the closed distal end of the needle,

inserting the needle into a patient such that the distal end of the needle is located within the pleural cavity of ~~a patient~~ the patient,  
extending the at least one articulating member outwardly from the needle,  
adjusting the location of the needle to cause the at least one articulating member to contact the parietal pleura of a the patient,  
rotating the needle to move the at least one articulating member to pick up a sample of the pleura onto the at least one articulating member,  
retracting the at least one articulating member to the retracted position, and  
removing the needle from the patient to collect a sample of the pleura adhered to the at least one articulating member.

4. The following is an examiner's statement of reasons for allowance:

Regarding claims 1-6, 11, 24, 25, 27 and 29-31, no prior art of record teach or fairly suggest a biopsy needle and method for using the biopsy needle to obtain a sample of tissue within the pleural cavity of a patient, as claimed by Applicant, where the biopsy needle includes an outer tube having a closed distal end, a central canal, and a pair of peripheral openings proximate the closed distal end; an inner movable member slidably disposed within the outer tube; and a pair of articulating members movably affixed to the distal end of the inner movable member and movable between a retracted position within the outer tube and an extended position where the articulating members extend outwardly through the peripheral openings in the outer tube, and where one of the articulating members has an operative surface with a brush edge thereon.

Regarding claims 12 and 15, no prior art of record teach or fairly suggest a biopsy needle

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for obtaining a sample of tissue within the pleural cavity of a patient, as claimed by Applicant, including an outer tube having a closed distal end, a central canal, and a pair of peripheral openings proximate the closed distal end; an inner movable member slidably disposed within the outer tube; and a pair of articulating members movably affixed to the distal end of the inner movable member and movable between a retracted position within the outer tube and an extended position where the articulating members extend outwardly through the peripheral openings in the outer tube, where the closed distal end of the outer tube has an internal elongated recess that receives a needle shaped end of the inner movable member to stabilize relative axial movement therebetween.

Regarding claims 13, 16-21 and 26, no prior art of record teach or fairly suggest a biopsy needle for obtaining a sample of tissue within the pleural cavity of a patient, as claimed by Applicant, including an outer tube having a closed distal end, a central canal, and a pair of peripheral openings proximate the closed distal end; an inner movable member slidably disposed within the outer tube; and a pair of articulating members movably affixed to the distal end of the inner movable member and movable between a retracted position within the outer tube and an extended position where the articulating members extend outwardly through the peripheral openings in the outer tube, where a T-shaped end tube having a pair of upper legs is affixed to the distal end of the inner movable member, and where the two articulating members are affixed to the upper legs.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (703) 305-3521. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II  
Primary Examiner  
Art Unit 3736

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September 24, 2004